141-468

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~370~~. 57

THE AMERICAN NET AND TWINE COMPANY, PLAINTIFF IN ERROR,

vs.

ROLAND WORTHINGTON, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF BOSTON AND CHARLESTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED JUNE 4, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 370.

THE AMERICAN NET AND TWINE COMPANY, PLAINTIFF IN ERROR,

vs.

ROLAND WORTHINGTON, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF BOSTON AND CHARLESTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Return of circuit court thereon	2	1
Caption	3	2
Plaintiff's declaration	4	2
Bill of particulars	5	3
Answer	6	4
Agreement waiving jury	6	4
Finding of facts by the court	7	4
Judgment	10	6
Defendant's exceptions	10	6
Opinion of the court	12	6
Assignment of errors	16	9
Clerk's certificate	17	9
Bond on writ of error	18	9
Citation and proof of service of same	19	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 19, 1891.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between American Net and Twine Company, a corporation duly organized according to law and having its usual place of business in Boston, in said district, plaintiffs, and Roland Worthington, collector of customs for the district of Boston and Charlestown, defendant, in an action of contract, a manifest error hath happened, to the great damage of the said American Net and Twine Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
THOS. L. NELSON,
Dist. Judge.

2 Circuit Court of the United States, District of Massachusetts, *ss:*

And now here the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal of the Circuit Court, Massachusetts.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this first day of June, A. D. 1888.

JOHN G. STETSON, *Clerk.*

3 UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Saturday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

Before the Honorable Le Baron B. Colt, circuit judge.

AMERICAN NET AND TWINE COMPANY, a Corporation Duly Organized According to Law and Having Its Usual Place of Business in Boston, in the District of Massachusetts, Plaintiff,

v.

ROLAND WORTHINGTON, Collector of Customs for the District of Boston and Charlestown, Defendant.

} No. 2521, Law Docket.

In action of contract; *ad damnum*, $2,000.

4 *Plaintiff's Declaration.* (*Filed Oct.* 15, 1885.)

First count.

And the plaintiff says that the defendant owes it the sum of sixteen hundred and eighty-six and $\frac{85}{100}$ dollars ($1,686.85), being the amount of duties paid by the plaintiff to the defendant under protest, according to a bill of particulars filed with the United States district attorney for this district.

Second count.

And also for that on the day of the purchase of this writ the said defendant, being indebted to the plaintiff in the sum of $1,686.85, demanded, exacted, and received of the plaintiff by the defendant, then and now collector of customs for the revenue district of Boston and Charlestown, under color of law of the United States, for the collection of duties on imports, and by the plaintiff paid under protest, and before the time of the purchase of this writ had and received by the defendant to the plaintiff's use, and in consideration thereof promised to pay the plaintiff when he should be thereto afterwards requested; yet said defendant has not paid the same or any part thereof, though thereto often requested.

And the plaintiff says that the exaction of said sum was illegal and the defendant owes it the amount so demanded and paid, with interest thereon from the date of payment.

CHARLES P. SEARLE,
Attorney for the Plaintiff.

Importer.	Vessel.	Merchandise.	Quantity.	Where from.	Date of invoice.	Date of entry.	Date of payment.	Excess of duty claimed.	Date of protest.	Date of appeal.	Date of Secretary's decision.
American Net and Twine Co.	Norseman.	Linen gilling twine.	13 cases	Liverpool.	Feb'y 4th, 1885	Feb'y 20, 1885	Feb'y 20, 1885	655 75	April 24, 1885	April 24, 1885	May 5, 1885.
" " "	Catalonia ..	" " "	6 "	"	M'ch 11th, "	M'ch 30, "	M'ch 30, "	245 55	" 24, "	" 24, "	" 5, "
" " "	Cephalonia	" " "	5 "	"	April 1, "	April 21, "	April 21, "	142 95	May 25, "	May 25, "	June 4, "
" " "	Catalonia ..	" " "	3 "	"	M'ch 11, "	M'ch 30, "	April 21, "	92 10	April 30, "	April 30, "	June 5, "
" " "	Scythia	" " "	6 "	"	Apr'l 29, "	May 16, "	May 16, "	183 90	June 5, "	June 5, "	" 18, "
" " "	Catalonia ..	" " "	7 "	"	May 21, "	June 9, "	June 9, "	194 25	July 2, "	July 2, "	July 9, "
" " "	Pavonia.....	" " "	5 "	"	May 12, "	June 2, "	June 2, "	172 35	July 2, "	July 2, "	July 9, "
			45					$1,686 85			

AMERICAN NET AND TWINE CO.
CHARLES P. SEARLE, *Att'y.*

6 The writ in this cause is dated the first day of August, A. D. 1885, and was duly entered at the October term of this court, A. D. 1885, when and where the parties appeared by their respective attorneys.

At the same term the following answer was filed:

Answer. (*Filed Nov.* 2, 1885.)

And now comes the defendant in the above-entitled action and for answer denies each and every allegation in the plaintiff's writ and declaration contained.

By his attorney, GEORGE P. SANGER,
U. S. Attorney.

This cause was thence continued from term to term to the May term, A. D. 1887, when the following agreement *is* filed:

Agreement Waiving Jury. (*Filed as of July* 22, 1887.)

In the above-entitled cause it is agreed that a trial by jury may be waived.

CHARLES P. SEARLE,
Attorney for Plaintiff.
T. H. TALBOT,
Ass't U. S. Att'y, for Def't.

7 This cause was thereupon set down for hearing and fully heard by the court, the Honorable Thomas L. Nelson, district judge, sitting, and was thence continued under advisement to this present term, and now the court make their finding of facts, and the same are filed and are as follows:

Finding of Facts by the Court. (*Filed Jan.* 31, 1888.)

The plaintiff corporation, whose business is the manufacture of fishing nets and seines, in the months of February, March, April, and May, 1885, made seven different importations of gilling into the port of Boston from Liverpool—in all, forty-five cases. The merchandise was invoiced and entered at the custom-house as gilling twine.

8 Upon the appraisement by the custom-house officials here the merchandise was classified as linen thread, and the collector assessed upon it a duty of 40 per cent. ad valorem. The plaintiff in each instance paid the assessed duty under protest, claiming that the article was dutiable at twenty-five per cent. ad valorem as gilling twine. Upon appeals to the Secretary of the Treasury the decisions of the collector were affirmed, and the plaintiff then brought this suit to recover back the alleged excess, which amounted on all the importations to $1,685.85. All the proceedings in respect to the plaintiff's protests and appeals were regular and taken in due season, and this suit was commenced within the time limited by law for bringing such suits. The merchandise after its

importation was used by the plaintiff in the manufacture of gill nets, and was imported expressly for that purpose.

The article in question is No. 35 three-cord, unbleached linen thread of superior quality, put up in half-pound balls, and was manufactured by the Scotch firm of W. & J. Knox at their works in Kilbirnie, Scotland. For more than twenty years thread of this description has been used by the plaintiff and other net-makers in this country for the manufacture of gill nets, principally for the fisheries on the Great Western lakes, the numbers of the thread used for this purpose ranging from 10 to 60. For many years before the tariff act of 1883 this kind of thread, of the manufacture of W. & J. Knox and other foreign makers, was imported under the name of gilling twine, to be used in making gill nets, and was invoiced and entered at the custom-house under that name, and was so designated on price-lists and trade circulars of the foreign makers. For many years before the act no other imported article was known by the special name of gilling twine. One of the custom-house officers testified that he never heard or knew of any other imported article that was called gilling twine.

9 On the other hand, the article is clearly not twine. It is not suitable for the uses which twine is commonly put to. It is made of flax from which the gum has been removed by boiling. It is flexible, without the stiffness of twine, highly finished, capable of being used for sewing, and is largely used for machine-sewing in many trades. It is not claimed by the plaintiff in this suit that, in a general sense, it is anything else than linen thread, or that it differs in material or quality or mode of manufacture from other similar thread. For many years linen thread of the same kind and quality has been both imported from abroad and made here in large quantities for many other purposes than for gilling. It is used by boot and shoe makers, upholsterers, book-binders, saddlers, and in many other trades, as sewing-thread. When imported for this purpose it is invoiced and entered as linen thread, and is so known in commerce and designated on price-lists and trade circulars. That which is made here for these uses is known only as linen thread. It is also made here for gilling purposes, and in such cases is invariably called gilling thread, never gilling twine. Of all that is made here or imported, at least nine-tenths, and probably nineteen-twentieths, is used for other purposes than as gilling. It also appeared that there is a large, coarse twine made of hemp, which is imported under the name of salmon twine, and is made into nets for gilling salmon. This article seems never to have acquired the name of gilling twine in the trade. There is also a cotton gilling twine which is made in this country, but never imported.

Upon the foregoing facts the court decides that the plaintiff cannot maintain this action and orders judgment for the defendant with costs.

THOS. L. NELSON,
Dist. Judge.

10 *Judgment.* (*Entered Jan.* 31, 1888.)

It is thereupon considered by the court, to wit, Jan. 31, 1888, that the plaintiff takes nothing by its said writ and that the said Roland Worthington, defendant, recover of the said American Net and Twine Company, plaintiff, his costs of suit, taxed at —.

The following bill of exceptions is allowed by the court, and by direction of the court is filed as of January 31, 1888, before entry of judgment herein, and made a part of the record in this cause:

Bill of Exceptions. (*Filed as of Jan.* 31, 1888.)

The above-entitled action was tried and determined by the court, the parties thereto having filed a stipulation in writing waiving a jury, and the court found the following facts (see finding of
11 facts by the court, page 7), and the court ruled—

1st. That upon the facts as found by the court the plaintiff could not maintain this action.

2nd. That the merchandise was subject to duty at the rate of 40 per centum ad valorem and not 25 per centum ad valorem.

To all and each of which rulings the plaintiff then and there excepted.

The plaintiff requested the court to rule that upon the facts the plaintiff was entitled to recover, and to order judgment for the plaintiff; but the court refused so to rule and ordered judgment for the defendant; to which ruling and refusal to rule the plaintiff then and there excepted, and the plaintiff prays that these exceptions may be allowed.

CHARLES P. SEARLE,
Att'y for the Plaintiff.

Exceptions examined and allowed by me as of January 31, 1888, before entry of judgment herein.

THOS. L. NELSON,
Dist. Judge.

12 The following is the opinion of the court, in accordance with which judgment for the defendant was entered in said cause:

Circuit Court of the United States, District of Massachusetts.

AMERICAN NET AND TWINE COMPANY
v.
ROLAND WORTHINGTON.
} No. 2521, Law Docket.

Opinion of the Court (*January* 31, 1888).

NELSON, *J.:*

This is an action at law by the American Net and Twine Company against the collector of the port of Boston to recover bank

duties paid under protest. By stipulation of the parties the case was heard by the court without a jury. The question in the case arises under the tariff act of 3 March, 1883, 22 Stat., 488. Schedule J, § 6, p. 507, contains this provision:

(1) "Flax or linen thread, twine, and pack-thread, and all manufactures of flax, or of which flax shall be the component material of chief value, not specially enumerated or provided for in this act, forty per centum ad valorem."

A subsequent paragraph of the same schedule is as follows:

(2) "Seines and seine and gilling twine, twenty-five per centum ad valorem."

The plaintiff corporation, whose business is the manufacture of fishing nets and seines, in the months of February, March, April, and May, 1885, made seven different importations of gilling into the port of Boston from Liverpool—in all, forty-five cases. The merchandise was invoiced and entered at the custom-house as gilling twine. Upon the appraisement by the custom-house officials
13 here the merchandise was classified as linen thread, and the collector assessed upon it a duty of 40 per cent. ad valorem under the first clause of Schedule J, above quoted. The plaintiff in each instance paid the assessed duty under protest, claiming that the article was dutiable under the second clause at twenty-five per cent. ad valorem as gilling twine. Upon appeals to the Secretary of the Treasury the decisions of the collector were affirmed, and the plaintiff then brought this suit to recover back the alleged excess, which amounted on all the importations to $1,685.85. All the proceedings in respect to the plaintiff's protests and appeals were regular and taken in due season, and this suit was commenced within the time limited by law for bringing such suits. The merchandise after its importation was used by the plaintiff in the manufacture of gill nets, and was imported expressly for that purpose.

The article in question is No. 35, three-cord, unbleached linen thread of superior quality, put up in half-pound balls, and was manufactured by the Scotch firm of W. & J. Knox at their works in Kilbirnie, Scotland. For more than twenty years thread of this description has been used by the plaintiff and other net-makers in this country for the manufacture of gill nets, principally for the fisheries on the Great Western lakes, the numbers of the thread used for this purpose ranging from 10 to 60. For many years before the tariff act of 1883 this kind of thread, of the manufacture of W. & J. Knox and other foreign makers, was imported under the name of gilling twine, to be used in making gill nets, and was invoiced and entered at the custom-house under that name, and was so designated on price-lists and trade circulars of the foreign makers. For many years before the act no other imported article was known by the special name of gilling twine. One of the custom-house officers testified that he never heard or knew of any other imported article that was called gilling twine.

14 On the other hand, the article is clearly not twine. It is not suitable for the uses which twine is commonly put to. It is made of flax from which the gum has been removed by boiling.

It is flexible, without the stiffness of twine, highly finished, capable of being used for sewing, and is largely used for machine sewing in many trades. It is not claimed by the plaintiff in this suit that, in a general sense, it is anything else than linen thread, or that it differs in material or quality or mode of manufacture from other similar thread. For many years linen thread of the same kind and quality has been both imported from abroad and made here in large quantities for many other purposes than for gilling. It is used by boot and shoe makers, upholsterers, book-binders, saddlers, and in many other trades as sewing thread. When imported for this purpose it is invoiced and entered as linen thread, and is so known in commerce and designated on price-lists and trade circulars. That which is made here for these uses is known only as linen thread. It is also made here for gilling purposes, and in such cases is invariably called gilling thread, never gilling twine. Of all that is made here or imported at least nine-tenths, and probably nineteen-twentieths, is used for other purposes than as gilling. It also appeared that there is a large, coarse twine made of hemp, which is imported under the name of salmon twine, and is made into nets for gilling salmon. This article seems never to have acquired the name of gilling twine in the trade. There is also a cotton gilling twine which is made in this country, but never imported.

It is certainly a matter of no little perplexity, upon the facts before the court, to decide what is meant by the term gilling twine in the second paragraph. It is apparent that Congress did not intend to let in all unbleached linen thread between the numbers 10 and 60 at the lower duty; yet that consequence would seem to follow if these importations are to bear only the lower rate. It is not to be supposed, in the absence of express provision to that effect, that it was intended to impose a different duty on the same article according as it was used for one purpose or another, nor is it to be presumed that Congress intended to designate the same article by two different names in the same schedule; nor is there any provision in the act for an entry in bond, such as one would expect to find if the rate of duty was to depend upon the use for which the importation is made. Congress might have provided that linen thread imported and used as gilling should be subject to a lower duty than when intended for other uses, but it has not done so. The general rule in the construction of tariff acts undoubtedly is that words designating commodities as subject to duties are to be taken in their ordinary commercial sense. But a name acquired by a commodity in one of its minor and subordinate uses ought not necessarily be taken as its commercial designation when it has acquired another in its more general and extensive use. The term "gilling twine" can have a sensible meaning by making it apply to salmon twine, which is gilling twine. If the purpose of the framers of the act was to put a lower duty on linen thread used as gilling, as the debates in Congress would indicate, they were certainly unfortunate in their selection of words to express the purpose. Taking both paragraphs together, the words "gilling twine" will better bear the construction of being descriptive of a twine made to

be used as gilling, such as the salmon twine already alluded to, than as designating linen thread that may also be used for that purpose. Upon the whole case, I am forced to the conclusion, though not without some hesitation and doubt, that the term "gilling twine" in the second paragraph means twine that is made and used for gilling, such as salmon twine, and does not mean linen thread, although one of the minor uses of the latter is for gilling, and that the ruling of the collector was right.

Judgment for the defendant.

16 Circuit Court of the United States, District of Massachusetts.

AMERICAN NET AND TWINE COMPANY
v.
ROLAND WORTHINGTON. } No. 2521, Law Docket.

Assignment of Errors.

The plaintiff in the above-entitled cause assigns the following errors for correction in the proceedings and rendition of judgment in the above-entitled cause:

1st. The circuit court erred in deciding as matter of law that the plaintiff cannot maintain this action.

2nd. In ordering judgment for the defendant.

3rd. In not ordering judgment for the plaintiff.

AMERICAN NET AND TWINE COMPANY,
By CHARLES P. SEARLE.

17 UNITED STATES OF AMERICA, *Massachusetts District,* } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record of said circuit court in the cause entitled No. 2521, law docket, American Net and Twine Company, plaintiff, *v.* Roland Worthington, defendant, lately determined in said circuit court, and of all proceedings therein and of the opinion of the court and assignment of errors therein.

Seal of the Circuit Court, Massachusetts.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this first day of June, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

JOHN G. STETSON, *Clerk.*

18 (*Bond on Writ of Error.*)

Know all men by these presents that we, American Net and Twine Company of Boston, Massachusetts, and Edward L. Grueby, of city

and State aforesaid, are held and firmly bound unto Roland Worthington, of said Boston, in the full and just sum of three hundred dollars, to be paid to the said Roland Worthington or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a trial in the United States circuit court, in a suit depending in said court between American Net and Twine Company and Roland Worthington, judgment was rendered against the said American Net and Twine Company for costs, and the said American Net and Twine Company having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Roland Worthington, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said American Net and Twine Company shall prosecute the said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

AMERICAN NET & TWINE CO. [L. S.]
IVERS W. ADAMS, *Treas.*
EDWARD L. GRUEBY. [L. S.]

Signed, sealed, and delivered in presence of—
F. E. MASON.

Approved.
THOS. L. NELSON, *Dist. Judge.*

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

19 THE UNITED STATES OF AMERICA:

To Roland Worthington, collector of customs for the district of Boston and Charlestown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Massachusetts, wherein The American Net and Twine Company, a corporation duly organized according to law and having its usual place of business in Boston, in said district, is plaintiff in error

and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas L. Nelson, district judge of the United States for the district of Massachusetts, sitting in said circuit court, this eighth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

THOS. L. NELSON,
District Judge of the United States for the District of Massachusetts.

Due, sufficient, and legal service of the above citation is hereby acknowledged.

T. H. TALBOT,
Ass't U. S. Attorney.

Endorsed on cover: Massachusetts C. C. U. S. No. 370. The American Net and Twine Company, plaintiff in error, *vs.* Roland Worthington, collector of customs for the district of Boston and Charlestown. Filed June 4, 1888.

C. G. Burgoyne's Printing Business, 14

SUPREME COURT OF THE UNITED STATES.

THE AMERICAN NET & TWINE COMPANY,
Plaintiff in Error,

vs.

ROLAND WORTHINGTON,
Defendant in Error.

October Term, 1891.
No. 55.

Statement.

This suit was tried by the Court upon due waiver of Jury trial (Record, folio 6), and the Court found the following facts (Record folios 7 to 10):

"The plaintiff corporation, whose business is the manufacture of fishing nets and seines," imported "seven importations of gilling."

The defendant imposed thereon a duty of 40 per cent. *ad val.*, under Schedule J of the Tariff Act of March 3, 1883, 22 Stats., p. 507, "flax or linen thread, twine and pack thread and all manufactures of flax or of which flax shall be the component of chief value not specially enumerated or provided for in this act."

This duty was paid under protest, claiming that the article was dutiable at 25% *ad val.* as "gilling twine" under another provision in the same schedule, viz.:

"Seines and seine and gilling twine."

The suit was brought to recover the difference of duty, and plaintiff had taken the proper statutory steps to maintain it.

Numbered for convenience of reference, the facts found relative to the proper rate of duty are these:

1. The merchandise was invoiced and entered at the Custom House as "gilling twine," was used in the manufacture of gill nets, and was imported expressly for that purpose.

2. The article is No. 35 three-cord unbleached linen thread of superior quality, put up in half-pound balls, and was manufactured by the firm of W. & J. Knox, in Scotland.

3. For more than twenty years, thread of this description has been used by the plaintiff and other net makers in this country for the manufacture of gill nets, principally for the fisheries on the great western lakes, the numbers of the thread used for this pnrpose ranging from 10 to 60.

4. *For many years before the Tariff Act of 1883, this kind* of thread of the manufacture of W. & J. Knox and other foreign makers was *imported* under the *name* of "*gilling twine,*" to be used in making gill nets, and *was so invoiced* and *entered at the Custom House* under *that name,* and *was so designated* on *price lists* and *trade circulars* of the foreign makers.

5. For many years before the act no *other imported* article was known by the *special name* of "*gilling twine.*"

One of the Custom House officers testified that he never heard or knew of *any other* imported article that was called "*gilling twine.*"

6. The article was not in, fact, twine, nor suitable for the uses which twine is commonly put to. It is made of flax, from which the gum is removed by boiling. It is flexible without the stiffness of twine, highly finished, capable of being used for sewing, and is largely used for machine sewing in many trades.

7. For many years "*linen thread*" of the same kind and quality has been imported, as well as made, here in large quantities for other purposes than "gilling," and used as *sewing thread*, and it is, when imported for *this* purpose, invoiced and entered as "*linen thread*," and is so known in commerce and designated on price lists and trade circulars. That which is made here for *these uses* is *known only* as "linen thread."

8. It is also made here for gilling purposes, and in such cases is invariably *called* "*gilling thread*," never "gilling twine."

9. Of all that is made here or imported, at least nine-tenths, and probably nineteen-twentieths, is used for other purposes than gilling. It is used by boot and shoemakers, upholsterers, bookbinders, saddlers, and the many other trades as sewing thread.

10. It also appeared that there is a large coarse twine made of hemp, which is imported under the *name of* "*Salmon twine*," and is made into nets for gilling salmon.

This article seems *never to have acquired the name* of *gilling twine in the trade.*

11. There is also a cotton gilling twine, which is made in this country, but never imported.

Assignment of Error.

Upon the facts found by the Court, the Court ruled as matter of law (Record, folios 10 and 11):

1st. That the plaintiff could not maintain his action.

2d. That the merchandise was subject to duty at the rate of 40% *ad val.*, and not 25%.

3d. The plaintiff then requested the Court to rule that upon the facts, the plaintiff was entitled to recover and to order judgment for the plaintiff, but the Court refused so to rule, and ordered judgment for the defendant. To each ruling the plaintiffs then and there excepted and they assign them for error.

4th Plaintiff also assigns for error that the facts found are not sufficient to support the Judgment.

Preliminary Suggestion.

The trial Judge declined to make any other statement of facts than an extract from his opinion, and we are embarrassed by the ambiguity and indefiniteness of the findings, and if from any deficiency of statement this Court cannot pass upon the issue, we ask for a *venire de novo* on the authority of the following cases.

Graham vs. Bayne, 18 How, 62–63.
Prentice vs. Zane, 8 How. 484.
Clement *et al* vs. Phœnix Ins. Co., 7 Blatch, 52–58.

We believe, however, enough is stated to raise the question of the true duty.

Comments on the Findings and Opinion.

Findings Nos. 1 to 5 show that for many years before the Tariff Act of 1883 these importations were known by the name of "gilling twine," and that no

other imported article was known by that special name, and that for many years they have been used in this country in the manufacture of gill nets.

We shall supplement this by showing that the special intention of Congress in levying the duty on gilling twine was to provide for *this very article.*

Findings 6 to 11 constitute the defendant's case, and they will briefly be considered.

Finding 6, that our article is not a " twine : "

a. " To be suitable for uses twine is commonly put to " does not exclude the idea of a special use.

b. If our article cannot be twine because the gum has been boiled out and it is flexible without the stiffness of twine, then, no gilling twine can be " twine."

A gill net is to be set in the water to catch fish by the gills. It should have the greatest possible flexibility of movement, combined with lightness of texture, strength, and invisibility. It should float in the current like grass or seaweed, so that the curious or hungry fish, running their heads unsuspectingly through the meshes, may be caught by the gills, and held by the strength of the twine or thread. Gum in the fibre would increase the weight, and diminish the strength. The water would wash it out, and the fibre come to pieces. Stiffness, glaze, polish, or hard twist, would kink the strands, and prevent its sinuous movement in the current.

c. If the name of the import is *gilling twine*, it is dutiable by that *name* whether it be a twine or not. A " hair pin " is not necessarily a " pin."

Robertson vs. Rosenthal, 132 U. S., 460.

If a duty be laid on " black lead " or " white lead " by name it matters not that neither is *lead.* It is not their description, but their name.

Solomon vs. Arthur, 102 U. S., 211–212.

d. The dictionaries define twine as a kind of thread, and this as twine.

As Judge SAWYER said in Leeson vs. Young, 45 Fed. Rep., 627, "if there is any reliance to be placed upon dictionaries in the definition of twine and thread, the article in question is certainly a twine rather than a thread." The term "pack thread" in the law is defined as a "twine" in the dictionaries. "Harness or heddle twine" is a well-known *thread* of great fineness used to harness a loom. Sail twine is used as a "thread" to sew sails.

Appendix A contains a list of definitions to show how confused and interchangeable these terms are.

e. Congress made no distinction but put twine and thread at the same duty in the same clause as being for tariff purposes the same thing.

But whether twine or thread there is no doubt what the article is, and it is just as well known as gilling, without any mention of either. In the present Tariff Act of October 1, 1890, (26 Stats., p. 593, § 367) relative to the duty on flax, nets and seines, the words "twine or thread" are twice used interchangeably as meaning the same thing.

Arthur vs. Cumming *et al.*, 91 U. S., 364, bottom.

f. The Treasury Department has in its regulations and decisions long ago decided that gilling twine was the name of this article and patent thread was not (Appendix B.), a circumstance of some weight, in fixing the meaning.

Downing vs. Robertson, 127 U. S., 608-613.
Robertson vs. Bradbury, 132 U. S., 493.

In finding No. 7 the words "kind and quality" are indefinite both in their meaning and application. To some minds they indicate "sameness" and to others "similarity."

Finding No. 8. That when linen thread is made here and used for gilling it is known as gilling thread and never as gilling twine, is but a continuation of the preceding finding.

The Court has already found as a fact that the foreign made gilling (the import) is known as "gilling twine;" that the name of the article when made here is different, does not contradict it.

The name of the foreign-made article is the only one that concerns us here, and remarks in the debates cited in Appendix C. show that our domestic-made gilling is an inferior article and little used.

This finding is very loosely drawn, and entirely immaterial. As it is in the present tense, it may not have been true either at, or before, the passage of the Tariff Act of 1883, or when the goods were imported. It is not stated even that gilling thread was made, used, or known as such, at those dates. As presumptions run forward, and not backward, the immateriality of the finding plainly appears.

Finding 9. If Congress designed to place a duty upon a variety of linen thread gilling twine, it makes no difference whether nine-tenths of all linen thread of the same kind and quality is used for other purposes or not. The question is whether Congress has done so.

Merritt vs. Welsh, 104 U. S., 700.

This finding is so inexact that nothing can be predicated on it whatever.

When the Court says that "of all that is made here "or imported, at least nine-tenths and probably "nineteen-twentieths is used for other purposes than "as gilling," he means of all the unbleached linen thread between Nos. 10 and 60. This appears from his opinion, page 8, Record, fols. 14 and 15, where he says "that Congress did not intend to let in all un-"bleached linen thread between the Nos. 10 and 60 at "the lower duty, yet that consequence would seem to

" follow if these importations are to bear only the " lower rate."

But the *importation* being No. 35 *three*-cord unbleached linen thread of superior quality, put up in half-pound balls, from which the gum has been boiled out, any comparison of relative quantities must be made not with the whole body of unbleached linen thread between 10 and 60, but with the specific article imported, from which all threads in colors, or on spools, hanks and bundles, all thread of low quality, or glazed, or polished, or containing gum should be excluded.

As matter of fact, though of the same kind and quality, threads and twines made for different uses must necessarily have peculiarities resulting from their different adaptations which distinguish them from each other. A claim that shoe thread, saddlers' thread, upholsters' thread, sewing thread and gilling cannot be distinguished from each other is unreasonable, and cannot be inferred from any statement carefully drawn to stop just short of it.

A trial before the Board of Appraisers shows the differences between gilling and the other threads, which the Court neglected to find.

Appendix B. Decision of December 4, 1890.

Again, if the article is used in very many trades and for many purposes, and but one-tenth is used for gilling, it may be that more is used for gilling than for any other single purpose.

These importations were all of No. 35, unbleached gilling, and no proportion is stated with that No. of thread, and it may well be that the principal use of No. 35 linen thread is for gilling purposes. We are here to try *this question only*, whether this importation No. 35 linen thread is gilling twine, and it having been found that that is its name and its use, a finding that of all the Nos. of linen thread between 10 and 60, but nine-tenths are used as gilling, does not tend to

show that the article imported No. 35 is not chiefly and entirely used as "gilling," and hence is worthless for any purpose here.

Finding 10 is far too indefinite in this finding, considering the great use made of it in the opinion. It does not state whether or not *this salmon twine made of hemp* existed at the date of the passage of the Act of 1883, or not, or even whether it existed at the date of our importations. It does not even appear how much is imported, or how much is used. There is just enough said about to raise a doubt, and nothing said to clear it up.

The article *salmon twine* has repeatedly been before the Courts and Treasury Department under this statute, and it has always been an article made of flax, and never of hemp but once, when the Treasury Department decided it not the gilling twine of commerce, and in material unfit for nets and seins, so that the probable reason why hemp salmon twine has never (as the Court finds) acquired in the trade the name of gilling twine is because it is not only difficult to find but also unfit to use.

McNab vs. Seeburger, 39 Fed. Rep., 759.
Leeson vs. Young, 45 *Ibid*, 627.
Treasury Decisions on Salmon Net Twine and Hemp Twine, Appendix B.
General Appraisers' Decision, December 4, '90, Appendix B.

But in no case can an article like ours, which is "gilling twine" by special name and description cease to be gilling twine because *a kind* of salmon twine which has never acquired the name of "gilling twine" may be described as a twine used for gilling.

Solomon vs. Arthur, 102 U. S., 208.
Maillard & Lawrence, 16 How., 261.

The debates in Congress (see Appendix C) absolutely show that if salmon hemp twine might have been

within the general, our goods were within the particular intention of Congress, because the mischief to be remedied was a discrimination against our fishermen on the great lakes by reason of the high duty on flax gilling. Salmon is a salt-water fish, and not found in the Lakes, and hemp gilling is not flax gilling.

The clause for "seines and seine and gilling twine" under discussion is dropped in the present tariff, and the following is supplied. "Flax gill netting, nets, "webs and seines, when the thread or twine, of which "they are composed, is made of yarn of a number not "higher than twenty."

26 Stats., p. 593; para. 367.

It is plain that the Legislature intends to cover flax goods, and not hemp.

Subsequent statutes frequently show by their language the legislative sense of former doubtful provisions.

Alexander vs. Mayor of Alexandria, 3 Cranch, 7, 8.

Finding 11 is of no importance. Cotton gilling twine is not imported, and the gilling twine designed to be dutiable by Congress must be presumed to be of "flax, jute, or hemp," because found in the Schedule for manufactures of those substances.

It is a complete answer to the general reasoning of the Court that our article is the one Congress had in mind when providing for gilling twine, and is named and described in the act; that if Congress desired to put a duty on any kind of linen thread that they had a perfect right to do so, although it might be by the name of a minor and subordinate use, and that "gilling twine" cannot be transformed to twine for gilling without destroying its intended operation.

The intention of Congress to impose a particular duty upon our article should not be ignored nor

diminished because Congress saw fit to use one of its several names instead of all. The Court below was not diligent in carrying out the intention of the statute. His statement that if "the purpose of the framers of the "act was to put a lower duty on linen thread used as "gilling, as the debates in Congress would indicate, "they were certainly unfortunate in their selection of "words to express the purpose," confesses that, knowing the intention of Congress, he refused to carry it out.

"The duty of the Court being satisfied of the intention of the Legislature, clearly expressed in a constitutional enactment, is to give effect to that intention, and not to defeat it by adhering too rigidly to "the mere letter of the statute or to technical rules of "construction."

Wilkinson vs. Leland, 2 Peters, 627 Sedgwick Const. and Stat. Construction, 196.

"And we should discard any construction that would "lead to absurd consequences."

U. S. vs. Kirby, 7 Wall., 482.

"We ought rather, adopting the language of Lord "HALE, to be 'curious and subtle to invent reasons and "means to carry out the clear intent of the law-making "power when thus expressed.' * * * The judiciary "must respect the latest expression of the legislative "will and not permit it to be eluded by mere construction."

Oates vs. National Bank, 100 U. S., 244.

It were idle to consider now whether the consequences the Court feared were more than imaginary, because the act has long since expired, and during its life was enforced according to his own view. Consequences are for Congress to take care of.

200 Chests of Tea, 9 Wheaton, 443 and 444.

"It has been said that unless the present libel can "be maintained a wide door will be opened for the "admission of frauds in the importation of teas. If "this be true, it forms no reason for a different judicial "construction of the Acts of Congress. * * * Con- "gress can provide an easy remedy."

U. S. vs. Fisher, 2 Cranch, 389, 390.
U. S. vs. Nelson, 29 Fed. R., 202-208, top.
Merrit vs. Welsh, 104 U. S., 694-700.

The Court arrived at his decision with great hesitation and doubt, as he twice states in the opinion, and evidently overlooked the rule that the highest duty is never imposed on a citizen in case of serious ambiguity in the language of an act or upon vague or doubtful interpretations.

Hartranft vs. Wiegman, 121 U. S., 609-616, top.
U. S. vs. Isham, 17 Wallace, 496, 504.

This Court has never allowed an importer to be trapped by the ambiguous words of a revenue statute.

Decisions of Courts on Gilling.

The clauses here in dispute have received repeated adjudication by the Courts and by the Board of General Appraisers acting under the so-called Administrative Act of June 10, 1890, 26 Stats.

McNab vs. Seeburger, 39 Fed. Rep., 759.
Leeson vs. Young, 45 *Ibid.*, 627.

Treasury Dec'n, Dec. 4, 1890 (Gen. Appr., 177), Appendix B.

In all these cases the article in dispute was the very article in this controversy. The difference being only in the form in which the article was imported. In this case the article in three cord or three ply in the McNab case the yarns were from 6 to 30 ply, laid together and

loosly twisted, in the Leeson case, the article was 14 ply No. 40 twine or thread "of the first quality of flax."

In the General Appraiser's case the goods were the same as ours and the facts found there were held sufficient to have entitled claimants to a refund had not this case been considered binding upon them.

These facts clearly appear in all the cases: That the goods are all of flax thread or twine of a different number of yarns, strands or ply according to the strength required.

In all the cases the government interpose the same defence and in every case but this one it has been overruled and the importer sustained.

POINTS.

I.

The findings of facts that there is an article of flax thread called gilling twine which plaintiff imported dutiable at 25% that there is a provision also for "flax "or linen thread twine and pack thread and all manu- "factures of flax or of which flax shall be the com- "ponent material of chief value not specially enumer- "ated or provided for in this act, 40% *ad valorem.*"

If the words "not specially enumerated or provided for" refer to the whole sentence including flax or linen thread, as they sensibly may, then there is not even a verbal conflict between the terms, because the flax thread called "gilling twine," is otherwise provided for, *eo nomine.*

But if the terms flax or linen thread, twine and pack-thread be unrestrained by the limiting clause then, as linen thread is a general term and gilling twine a spe-

cific designation of a kind of linen thread, "it is also "well settled that when Congress has designated an ar- "ticle by its specific name, and imposed a duty on it "by such name general terms in a later act or other "party of the same act, although sufficiently broad to "comprehend such article are not applicable to it."

Robertson vs. Glendenning, 132 U. S., 158.
Vietor vs. Arthur, 104 U. S., 499.
Arthur vs. Lahey, 96 U. S., 112.
Homer vs. The Collector, 1 Wallace, 486.
Reiche vs. Smythe, 13 Wallace, 162.
Arthur vs. Rheins, 96 U. S., 143.

II.

The findings show that the name of the article imported for many years has been gilling twine, and that no other imported article was known by that special name.

They also show that the article has been used for many years in making nets and seines principally for the fisheries on the great western lakes, and hence is within the intention of the statute.

And also that this particular importation was expressly imported for and used in the manufacture of gill nets.

Being thus both within the express letter and the intention of the statute, it cannot be removed from its operation by any rule of statute interpretation.

"In construing these laws it has been truly stated to "be the duty of the Court to effect the intention of "the Legislature. But this intention is to be searched "for in the words which the Legislature has employed "to convey it."

Paulina's Cargo vs. U. S., 7 Cranch, 60, Marshall, C. J.
Denn vs. Reid, 10 Peters, 527, middle.
Merritt vs. Welch, 104 U. S., 701.

Wherever the will or intention of the law-making power is declared in plain and unequivocal terms, that will or intention must be followed—absolutely followed.

Binns vs. Lawrence, 12 How., 17–18.

Where any clause of a statute is free from ambiguity it is not admissible to go out of that clause and to search in the act at large for provisions which might tend to render ambiguous the plain terms of the clause under interpretation.

Faure vs. Sinking Fund Commissions, 23 Fed. Rep. 645.

"Where words conflict with each other, when the different clauses on the act bear upon each other and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But it in any case the plain meaning of a provision not contradicted by any other provisions in the same instrument is to be disregarded because we believe the framers of that instrument could not intend what they say, it must be one where the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would without hesitation unite in rejecting the application."

STORY on Conflict of Laws, Introd. Remarks, p. 10.

III.

But if the Court believe that the term "gilling twine" is ambiguous, and open the doors to an exploration of the intention of Congress *ultra* the words, we have to say that since the foundation of the government our laws have specially favored the fishing interest by drawback bounty and discriminating provisions.

IV.

Congress had no particular intention about sewing machine thread or the other specifically named threads referred to in the opinion, because it did not name them, but it did have about gilling twine, the material used in making nets and seines and that particular intention cannot be suffered to perish because it draws after it consequences concerning other articles on which Congress had not specially legislated. It may be that such consequences were intended.

V.

The tariff in question shows a special design to protect our fishermen and fisheries aside from the clause under discussion.

The following articles are on the free list:

Fish fresh for immediate consumption.

Fish for bait.

Oil, spermaceti whale and other fish oils of American fisheries and *all other articles the produce of such fisheries* (22d Stats., 519, 620). In Schedule G the duty upon "fish" refers to foreign caught fish, because after enumerating fish of various kinds the law proceeds "*foreign caught fish* imported otherwise than in barrels" * * * 50 cents per hundred pounds, the produce of American fisheries being free as above (22d Stats., 503, bottom).

VI.

In addition to this it was the particular intention of Congress in reducing the duty on gilling twine, to cor-

rect a discrimination existing against our *fishermen on the lakes*, by reason of a high duty existing on the *very article in suit* gilling of Scotch or Irish flax in consequence of which they were being driven out of our markets by British fishermen who had by treaty the right to fish in our waters and bring in their fish free of duty. It must not be forgotten that the gilling twine here is of Scotch flax and that it was expressly imported to make gill nets to be used principally on the lakes, in competition with nets that paid no duty. These facts are shown in Appendix C of this brief, and are the proceedings in Congress attending the passage of the act, and the remarks of Mr. Conger of Michigan introducing the provision in question in which he shows the hardships which the fishermen on the great lakes suffered by the high duty on the material of their nets—gilling twine of Scotch or Irish flax.

While the individual opinions of members on the *meaning* of words used are of no consequence, yet facts showing the state of the former law and *the mischief to be remedied* brought out in the proceedings will be considered.

Aldridge vs. Williams, 3 How, 24.

Mr. Justice FIELD, after quoting from the "Congressional Globe" remarks made in the Senate by the author of the Mining Act, says:

"These statements of the author of the act in advocating its adoption cannot, of course, control its construction where there is doubt as to its meaning, but they share the condition of mining property on the public lands of the United States and the terms by which it was held by miners in the absence of legislation on the subject, and thus serve to indicate the probable intention of Congress in the passage of the act."

Jennison vs. Kirk, 98 U. S., 459, 460.

And in another case, to clear up an ambiguity, this

Court says: "Under these circumstances we are compelled to ascertain the legislative intention by a recurrence to the mode in which the embarrassing words were introduced, as shown by the Journal and records, and by giving such construction to the Statute as we believe will carry out the intentions of Congress.

Blake vs. National Banks, 23 Wall, 317–319.

And in the same volume, Mr. Justice BRADLEY refers to action of the Finance Committee in reporting the Act of 1873, stating the value of the pound sterling as an ascertained fact as a reason for his construction of that Statute.

The Collector vs. Richards, 23 Wallace, 258.
U. S. vs. U. P. R. R. Co., 91 U. S., 79.
Platt vs. U. P. R. R. Co., 99 U. S., 59, 60.
Preston vs. Browder, 1 Wheaton, 121.
U. S. vs. Callier, 3 Blatch., 335.
Wilson vs. Spalding, 19 Feb. Rep., 304–306.

As Mr. Justice HARLAN says, in a case of construction of a will, after considering evidence of the state of facts probably influencing the testator.

"Of the competency of this evidence there can be no "doubt. The purpose of it was to place the Court as "far as possible in the situation in which the testator "stood, and thus bring the words employed by him into "contact with the circumstances attending the execu- "of the will." * * * "The law is not so unreason- "able as to deny to the reader of an instrument the "same light which the writer enjoyed."

Gilmer vs. Stone, 120 U. S. 590.

VII.

Unless the term "gilling twine" covers the material used to make gill nets used on the great lakes which

these importations precisely are, the special mischief the legislators designed to remedy will remain, and their intention be either entirely disregarded or perverted to cover something else.

VIII.

It has been held that "a thing may sometimes be "within the letter and not within the spirit of the "statute, and therefore without the statute, and some- "times it may be within the spirit and not within the "letter and still included in the statute; and this even "in criminal cases."

U. S. vs. White, 27 Fed. Rep., 203 (BREWER, J.), following U. S. vs. Freeman, 3 How, 564–565.
Smythe vs. Fiske, 23 Wallace, 380, top

Under the rule last named this Court might well say that articles of thread or twine used for gilling and not known as *gilling twine by name* should be dutiable as gilling twine, because within the spirit and intent of the statute and within the reason on which the legislators proceeded (U. S. vs. Freeman, above cited); but no Court has held yet that an article like ours within the letter, and also within the intent of the statute, can ever be without the statute altogether.

EDWARD HARTLEY,
WALTER H. COLEMAN,
CHARLES P. SEARLE,
Of Counsel for Plaintiff in Error.

APPENDIX A.

Definitions.

WORCESTER.

Yarn. 1. Thread of wool, cotton or silk, etc.; wool, cotton, flax or hemp spun or drawn out and twisted into threads.

Thread. A small line or twist of any fibrous or filamentous substance, as flax, silk, cotton or wool, particularly such as is used for weaving or for sewing.

Pack Thread. Strong thread or twine used in tying up bundles.

Twine. A small kind of cordage formed of two or three strands twisted together; a twisted thread, a small cord.

String 1. A slender rope or band, a small cord, a twine, a thread, a line.

WEBSTER:

Twine. A strong thread composed of two or more smaller threads or strands twisted together and used for various purposes, as for binding small parcels, sewing sails to their bolt ropes, *making nets* and the like; a small cord or string.

MCELRATH'S COMMERCIAL DICTIONARY, 1871:

Linen thread. Flaxen spun yarn, double and twisted or composed of three or four strands and twisted; usually put up in one pound packages. *Gilling twine* and shoemakers' threads are linen threads.

Pack Thread. A strong twine or small cordage used in tying up packages.

Twine. A double and retwisted thread differing from yarn, which is a single thread more or less twisted.

Twine is made of flax, hemp, jute or cotton of various thicknesses and qualities * * * (After giving trade numbers from 1 to 18, the definition proceeds) * * * also seine twine, gill twine, patent twine, 4 ply Sec.

Isaiah, Chapter XIX.:

8. The fishers also shall mourn, and all they that cast angles into the brooks shall lament, and they that spread nets upon the waters shall languish.

9. Moreover, they that work in FINE FLAX and THEY THAT WEAVE NET WORKS shall be confounded.

10. And they shall be broken in the purposes thereof, all that make sluices and ponds for fish.

(Quoted to show the antiquity of the use of "*fine flax*" for nets.)

Scribner's Magazine, Vol. XX., No. 4, Aug. 1880:

Pp. 488, 492: Our River, by John Burroughs.

P. 492. "The ordinary gill or drift net used for shad fishing in the Hudson is from ½ to ¾ of a mile long and 30 feet wide, containing about 50 or 60 pounds of fine linen *twine*, and it is a labor of many months to knit one. Formerly the fish were taken mainly by immense seines, hauled by a large number of men; but now all the deeper part of the river is fished with the long, delicate gill nets that drift to and fro with the tide and are managed by two men in a boat. The net is of fine linen *thread* and is practically invisible to the shad in the obscure river current; it hangs suspended perpendicularly in the water, kept in position by buoys at the top and by weights at the bottom; the buoys are attached by cords 12 or 15 feet long which allow the net to sink out of the reach of the keels of passing vessels."

Observe that the net which is at first said to be of "fine linen twine," is afterwards said to be of "fine linen thread," a confusion more pardonable than that of the decisions above cited.

APPENDIX B.

Extract from Treasury Circular of December 31, 1847, Mayo's Circulars, Vol, 2, page 410:

"Patent thread, an article sometimes so called, but in reality *gill twine*, liable to a duty of 30 per cent. *ad valorem*."

Also *ibid*, page, 411:

"Twines and pack thread of whatever material composed" provided for in Shedule C, to comprehend gill twine, sometimes called patent thread.

Treasury Regulations of 1857, pages 588–589, repeats the decision last above, word for word.

(10,527—G. A. 177).

Gilling.

NEW YORK, December 4, 1890.

Before the Board of United States General Appraisers at New York, December 4, 1890:

In the matter of the protests, Nos. 756*a*, etc., of J. Dougan & Co., and Hughes Fawcett, against the rate of duty assessed upon certain gilling, imported per steamers mentioned in the accompanying schedule.

Opinion by Sharretts, General Appraiser:

The merchandise in question is invoiced as gilling, but differs from that which was the subject of decision by this Board, October 1, 1890 (G. A. 53), which decision covered various colored bookbinder's thread, and not machine thread or gilling twine.

The contention of the appellants in the present case is that the assessment of duty upon the gilling at 40 per cent. *ad valorem*, made in accordance with the provisions of paragraph 336 of the Act of March 3, 1883, was erroneous, inasmuch as the gilling upon appeal is specially provided for by name in paragraph 347.

The goods are similiar in appearance to the ordinary unbleached flax or linen thread of commerce, but from expert testimony and an inspection of the several numbers of the same submitted to us for examination, and which were labelled "gilling twine," in comparison with the same numbers of machine thread, it is quite apparent that the difference between the two is so marked as to render them easily separable. The machine thread is a harder twist and contains more sizing than the gilling, the former, of which the evidence taken upon the subject tended to prove, could not be satisfactorily used for manufacturing gilling nets, for the reason that the action of the water would kink the hard twisted thread and dissolve the gum or sizing, thus rendering the nets made therefrom comparatively worthless. It is also in evidence that the terms "gilling thread, and gilling twine," are interchangeable, and are used in common for the same material, the thickness of which is not determined by the words "thread or twine," but by the number of fineness, and that the phrase "gilling twine," employed in paragraph 347, is denominative of the particular kinds of gilling upon appeal, and was at the time of the passage of the act in 1883.

The matters of fact set forth above, if clearly proven, would, in our opinion, render the merchandise on appeal liable to duty at 25 per cent. *ad valorem*, the rate provided for gilling twine in paragraph 347. Inasmuch, however, as the question at issue does not effect the classification of similar merchandise under the present act, and as it has already been ruled upon by a lower Court, and is now pending in the Supreme Court of the United States, we do not deem it expedient to accept the evidence presented as conclusive, but affirm the assessment thereupon, which was made in accordance with a long-established ruling of the Treasury Department.

(4967.)

Salmon-Net Twine—Duty on.

TREASURY DEPARTMENT, *August* 20, 1881.

SIR—The Department is in receipt of your letter of the 17th instant, transmitting a communication from the Appraiser at your port in relation to the classification for duty of certain so-called salmon-net twine, an article stated by him to be identical with the "linen yarn" which is the subject of Department's ruling of the 11th instant, on the appeal (4028*g*) of Ross, Turner & Co.

You are requested to inform the Appraiser that, if there is no substantial difference between the two articles, except in the use to which they may be applied, the said salmon-net twine should be subjected to classification as *yarn*, under the said ruling.

Very respectfully,

J. K. UPTON,
Assistant Secretary.

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(6262)

Gilling-Nets.

TREASURY DEPARTMENT, March 24, 1884.

SIR: The Department is in receipt of your letter of the 12th ultimo, transmitting the appeal (3569*i*) of Messrs. W. B. Isbell & Co., from your decision assessing duty at the rate of 40 per cent. *ad valorem* on certain gilling-nets imported into your port on January 28, 1884, which the appellants claim to be dutiable at the rate of 25 per cent. *ad valorem*.

An inspection of the sample shows that the articles are gilling or fishing nets which are made from gilling flax threads.

The articles were classified by you under the provision (T. I., new, 336) for "all manufactures of flax," &c., while it is understood that the appellants claim that they should be classified under the provision (T. I., new, 347) for "seines" and "seine and gilling twine."

(6467.)

Linen Thread claimed to be Salmon-Net Twine.

TREASURY DEPARTMENT, *July* 18, 1884.

The following decision in regard to duties on linen thread claimed to be salmon-net twine is published for the information and guidance of customs officers.

CHAS. E. COON,
Assistant Secretary.

TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS.

TREASURY DEPARTMENT,

Office of the Secretary,
Washington, D. C., July 18, 1884.

SIR—I have considered the appeal (2706*i*) of Neville & Co., submitted in your letter of January 15, 1884, in regard to duties on certain so-called salmon-net twine imported, per ship "Austria," from Glasgow.

Duties were assessed on the merchandise at the rate of 40 per cent. *ad valorem*, under paragraph 336 of the tariff of March 3, 1883, which provides for flax or linen thread, twine or pack thread not specially provided for in that act, while the appellants claim it is dutiable at 25 per cent. *ad valorem*, under paragraph 347, for "seine and gilling twine."

The distinction between linen thread and twine for salmon or gill nets was discussed in decision of December 3, 1883, addressed to you on the appeal (303*i*) of Henry Doyle & Co., and your action in the present case was based on that decision, and was in conformity therewith.

* * * * * *

The rule embodied in the decisions before specified, and more fully expressed in this letter, when applied to the merchandise covered by this appeal, would, it is understood, bring it within the category of linen thread, and exclude it from that of seine or gilling twine.

Your assessment of duty at the rate of 40 per cent. *ad valorem* is therefore affirmed.

Very respectfully,

CHAS. J. FOLGER,
Secretary.

COLLECTOR OF CUSTOMS,
San Francisco,
Cal.

[Decision of December 3, 1883, mentioned in foregoing letter.]

TREASURY DEPARTMENT,
Washington, D. C., December 3, 1883.

SIR—The Department is in receipt of your letter of the 13th of October last, transmitting the appeal (303*i*) of Henry Doyle & Co. from your decision assessing duty at the rate of 25 per cent. *ad valorem* on certain so-called salmon-twine imported, per "San Blas," July 2, 1883, which the appellants claim to be dutiable at the rate of 40 per cent. *ad valorem*, as linen thread.

It appears that the article was classified by you as "seine twine," under the provision in Schedule J (T. I., new, 347) for "seine and gilling twine," while the ap-

pellants claim that it is not either "seine" or "gilling" *twine*, but linen *thread*, which should be classified under the further provision in such schedule (T. I., 336) for "flax or linen thread, twine, and packthread, and all manufactures of flax," &c.

An inspection of sample shows that the article is composed of several strands of linen shoe-thread loosely twisted together, which does not contain any gum or other similar vegetable substance.

It is used to a great extent in the manufacture of salmon-nets, but is also capable of use for other purposes, such as in making macrame thread lace, in sewing the soles of boots and shoes on the McKay machine, and in weaving filtering bags for sugar-refiners and chemical works.

The use, however, of the article does not control its classification, and the question to be decided in this case is one of fact as to whether the article is seine or gilling twine or thread.

The Appraiser at New York, to whom the samples were submitted, reports that, in the opinion of manufacturers and dealers in similar merchandise at that port, the article is "a thread, and not a twine;" that the expert in his office states that the article is a *thread*, twine being a harder twisted article, finished without boiling and containing 33⅓ per cent. in weight of gum and other vegetable substances, while thread, being boiled, is of softer finish and more expensive. He also reports that this article is not known as "seine" or "gilling" twine.

Upon the whole, the Department is inclined to concur in the opinion thus expressed, and it therefore decides that the article, not being the seine or gilling twine of commerce, is dutiable at the rate of 40 per cent. *ad valorem*, under the provisions (T. I., new, 336) above mentioned.

You will adjust the entry accordingly, and take the

necessary steps for collecting the duties still due on such merchandise.

Very respectfully,

H. F. FRENCH,

Assistant Secretary.

COLLECTOR OF CUSTOMS,

San Francisco, Cal.

"Seine and Gilling Twine"—Certain Linen Twine not Dutiable as.

TREASURY DEPARTMENT, Oct. 15, 1887.

SIR—The Department is in receipt of your letter of the 1st instant reporting further on the appeal (4655 p.) of Mr. F. Maggio from your assessment of duty at the rate of 40 per cent. *ad valorem* on certain linen twine imported by him, per "San Blas," June 6, 1887, and claimed to be dutiable at the rate of 25 per cent. *ad valorem* under the provision in T. I. 347 for "seine and gilling twine."

The appraiser reports that the article in question is a hard twine made from Italian Hemp, which is never used for making seines; that it is not the seine or gilling twine of commerce and that seines are invariably made of a soft flax twine, bearing but little resemblance to this importation, or from cotton twine.

The appraiser at New York reports that similar twine would be classified at that port as linen twine, at the rate of 40 per cent. *ad valorem* under T. I. 336.

Your assessment of duty thereon is hereby affirmed.

Respectfully yours,

J. H. MAYNARD,

Assistant Secretary.

Collector of Customs, San Francisco, Cal.

APPENDIX C.

CONGRESSIONAL RECORD.

47TH CONGRESS 2D SESSION.

Vol. 14, Part 3.

* * * * * *

p. 2548. The President *pro tempore.*

The Senator from Vermont now moves to take up the revenue bill.

The Motion was agreed to and the Senate resumed the consideration of the bill (H. R. 5538) to reduce internal revenue taxation, the pending question being, &c.

* * * * * *

page 2562.

The next amendment made as in Committee of the Whole was, in line 1186, after "seines," to strike out "6½ cents per pound" and insert "35 per cent. *ad valorem*;" so as to read:

Seines, 35 per cent. ad valorem.

MR. MORRILL: That ought to be disagreed to.

The PRESIDING OFFICER: The question is on concuring in the amendment.

MR. CONGER: I wish to make a remark befor the question is put. The material of which seines and gill-nets are made is generally Scotch or Irish flax. I do not find in the bill where the duty is upon gilling-twine, twine for seines. I have been looking carefully to find it. If the Committee will tell me under what classification that would come I should like to know.

MR. MORRILL: Line 1194.

MR. CONGER: What is the duty upon it?

MR. MORRILL: Thirty-five per cent.

MR. CONGER: The fishermen on the lakes (I cannot say how it is in salt water) who use seines and gill-nets

are compelled to have their gill-nets made from imported twine. American twine does not answer the purpose; it decays faster by the constant wetting and drying and is very little used.

By the treaty of Washington the Canadians may fish and bring in their fresh fish from any of the lakes or their connecting waters into the United States free of any duty. The competition between Canadian fishermen and American fishermen on these waters is very seriously affected by a treaty over which Congress at present has no control. In Canadian waters, on what is said to be the other side of the imaginary line which separates the two countries, the Canadians impose a royalty by leasing the waters to Canadians and obtain profit from it. American fishermen are not permitted to fish in Canadian waters without buying the privilege of the fisheries. By that treaty, so wrong in regard to this matter, Canadians can come in without paying any license or renting any fishery and fish up to the shores in American waters and land and put their fish in our market free of duty.

The expense of an outfit for an American fisherman is almost double, with its seines and nets, the expense to the Canadian, and unless the Canadian tariff has been changed they bring in their foreign twine, the only suitable twine for gill-nets, they did in former times free of duty, and I do not know but they do now. The outfit for a fisherman on those lakes, including the boats and gill-nets, which are the main articles of expense for an American fisherman, is between $800 and $1,000 for each man who has his boat and assistants and goes out to set gill-nets in the depth of the lake and catch the fish. For the Canadian fisherman about the same ratio would be $500, as asserted by many, $400; so that the American fisherman must pay for his outfit about twice as much, owing to the duty upon gilling-twine and seines, to get the plant for fishing that the Canadian fisherman does;

and he cannot go into Canadian waters, or into some considerable portions of them on the lakes without paying for theright to fish. There is an injustice which the treaty brings upon our people, under which they suffer continually.

The attempt has been made for years to put gilling twine upon the free list. It has been successful in one branch of Congress, but has not passed so as to become a law. With all the injury to our fishermen on those lakes and rivers by a treaty sprung upon them without any opportunity of knowing its contents or the effects of it, that is the condition in which fishermen are placed. For that purpose, and because Canada and Canadians impose upon our fishermen the necessity of paying for the grounds upon which they go to fish, and because the Canadian fishermen may come without any payment into American waters and fish, and they come to the cities along the coast and bring in their fresh fish free of duty and compete in our market, I desire that seine and gilling-twine, until this treaty can be abrogated, shall be put upon the free list.

Having stated this much, I move as an amendment to the amendment made as in Committee of the Whole to strike out the paragraph.

MR. MORRILL. I trust that will not be done.

MR. VANCE. I ask if that would not leave the tax of 35 per cent. imposed in the paragraph, beginning in line 1122, on "other manufactures of flax?"

MR. MAXEY. No; it is different.

MR. VANCE. This seine-twine, I understand, is made of flax.

MR. CONGER: I will move when I have an opportunity to do so, to put seines and seine and gilling twine on the free list.

MR. MORRILL: I ask the senator to postpone that until he accomplishes his first purpose, and not to em-

barrass us by consuming time upon this until he is through with the other.

MR. CONGER: The amount of time I consume I think the senator from Vermont can spare for a moment. It may be proper sometimes for some member besides the committee if he thinks he has an interest, to say a word or two; and I am one of that kind of men.

MR. MORRILL: I do not object to the senator speaking, but he will see at once that the paragraph ought not be stricken out unless he accomplishes his purpose with the free list.

MR. CONGER: I hope that will be an inducement to strike it out here. Therefore, I state my intention to move, when I have an opportunity, to insert it on the free list.

MR. SEWELL: I have not heard the remarks of the Senator from Michigan as to the reason why he wants to put this item on the free list. I want to know why we should make a distinction upon a fine article like this when the manufacturers of cotton get 40 and 50 per cent. protection?

MR. CONGER: If the Senator had been here when I made my statement I think it would have appealed to him so strongly for its justice that he would have joined with me. The material for seines and gilling twine is from flax raised in Scotland and Ireland, and I said that the duty upon it, whatever it may be here, was pretty high; that for that kind of seines and nets where they are left in the water for a day or two, or three or four days, and in stormy weather our own flax will not make the proper material. I stated, too, that the Canadian fishermen, by the treaty of Washington, had the right to fish on all our inland lakes and rivers connecting them; that, by the laws of Canada, they bring in the gilling twine and the seine twine, or could, the last I knew of their laws, free of any duty from the old country; that they could come into our waters with these

seines and nets free of duty upon the twine from which they were made, and fish without paying any royalty or paying for any fishing grounds in our waters, and we admit their fish free of duty.

MR. SEWELL: Now I see the drift of the argument of the Senator from Michigan.

MR. CONGER: I also stated that a proper outfit for a fisherman on Lake Huron or any inland lake would cost our fisherman $800, and the Canadian fisherman would have the same plant for $400, or at most for $500, and that twine is brought from Scotland or from Ireland as twine, it is not manufactured in this country. The fishermen make their own nets. There is no manufactory of nets anywhere. The wives and daughters of the fishermen manufacture the twine into nets.

MR. SEWELL: I will move to amend the amendment of the Senator from Michigan by adding "and seine twine 25 per cent. *ad valorem.*"

MR. MORRILL: It already stands in the bill at 35 per cent. I wish to suggest to the Senator from Michigan that I hope to vote with him for the abrogation of the Washington treaty before the close of the present session, and then his great objection to this clause will, I trust, be in a large measure removed.

Mr. CONGER: That remove part of other things, but not the excessive duty on the twine which the fisherman buys, and from which in his hours of leisure he manufactures his nets. There are no manufacturing establishments for seines and nets anywhere: it is done by hand entirely, and done by fishermen themselves with a measure of just such twine as they want to use and the seines or gilling nets will take.

MR. SEWELL: Will the Senator be willing to modify the paragraph by inserting per cent. and adding "and seine twine" to the amendment made as in Committee of the Whole?

MR. CONGER: I should far rather have it this way. If the Senator would say 20—

MR. SEWELL: Twenty-five per cent. is low enough.

THE PRESIDING OFFICER: Will the Senator from New Jersey state his amendment?

MR. SEWELL: I propose to make the duty twenty-five per cent. *ad valorem*, instead of thirty-five per cent. and to add "and seine twine."

MR. CONGER: That proposition is better than the present law. If that may be amended to add seine twine and gilling-twine I shall make no objection.

MR. SEWELL: I will so modify the amendment I propose.

MR. CONGER: I prefer to have it on the free list and keep it there until the treaty of Washington is revoked, and then we shall see what to do with it.

THE PRESIDING OFFICER: The amendment of the Senator from New Jersey (Mr. Sewell) will be reported.

THE ACTING SECRETARY: In line 1186 it is proposed to strike out "35" and to add, "and seine and gilling-twine, "25;" so as to read:

Seines, and seine and gilling-twine, 25 per cent. *ad valorem*.

The amendment to the amendment was agreed to.

The amendment as amended was concurred in.

OCT 10 1891
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

AMERICAN NET AND TWINE COMPANY, plaintiff in error,
vs.
ROLAND WORTHINGTON, COLLECTOR, etc.
} No. 55.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANT IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

AMERICAN NET AND TWINE COMPANY, plaintiff in error,
vs.
ROLAND WORTHINGTON, COLLECTOR, etc.
No. 55.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT.

This case is brought up from the circuit court of the United States for the district of Massachusetts on a writ of error, and involves a construction of the tariff act of 1883, relating to linen thread and gilling twine.

The plaintiff is a corporation having its principal place of business in Boston and is engaged in the manufacture of fishing nets and seines.

In 1885, from February 20 to June 2, inclusive, it brought in from Liverpool 7 importations, consisting of in the aggregate of 45 cases of linen thread or twine, which was invoiced and entered as "linen gilling twine."

The collector classified the importations as "linen thread," and exacted a duty of 40 per cent. ad valorem under that paragraph of Schedule J of said act (22 Stat., 507) which reads as follows:

> Flax or linen thread, twine, and pack thread, and all manufactures of flax, or of which flax shall be the component material of chief value, not specially enumerated or provided for in this act, forty per centum ad valorem.

The plaintiff claimed that the article was subject to a duty of only 25 per cent. under the paragraph of said schedule J which reads as follows:

> Seines and seine and gilling twine, twenty-five per per centum ad valorem.

Duties were collected upon the importations at the 40 per cent. rating, and the importers protested, appealed, and brought suit.

The alleged excess amounted to $1,685.85.

The action was commenced in said circuit court in October, 1885, and the issue presented by the pleadings was heard in July, 1887, by Judge Nelson, a jury having been waived by stipulation. (Rec., p. 4.)

A judgment was rendered in defendant's favor January 31, 1888 (p. 6). The case below is reported (33 Fed. Rep., 826), and the finding of facts filed and the opinion rendered are set forth in the record at length (pp. 4 to 9).

POINTS.

I.

UNDER THE FINDING OF FACTS THE COMMODITY IMPORTED IS DUTIABLE AS THREAD AT 40 PER CENT. AD VALOREM.

The single question arising upon the bill of exceptions (p. 6) is, under which of the paragraphs cited shall these importations be classified?

According to the finding of facts "the article in question is No. 35 3-cord unbleached linen thread of superior quality, put up in half-pound balls." The finding also says that "the article is clearly not twine. It is not suitable for the uses which twine is commonly put to. It is made of flax from which the gum has been removed by boiling. It is flexible, without the stiffness of twine, highly finished, capable of being used for sewing, and is largely used for machine sewing in many trades."

The court also finds that "it is not claimed by the plaintiff in this suit that in a general sense it is anything else than linen thread, or that it differs in material or quality or mode of manufacture from other similar thread."

It is also found that "for many years linen thread of the same kind and quality has been both imported from abroad and made here in large quantities for many other purposes than for gilling."

The court also finds that "it is used by boot and shoe makers, upholsterers, bookbinders, saddlers, and in many other trades as sewing thread," and that "when imported for this purpose it is invoiced and entered as linen thread, and is so known in commerce and designated on price

lists and trade circulars." It is further found, that "that which is made here for these uses is known only as linen thread;" that when made here for gilling purposes it is invariably called gilling thread, never gilling twine. The court also finds that "of all that is made here or imported at least nine-tenths, and probably nineteen-twentieths, is used for other purposes than gilling."

The facts are also found that there is a cotton gilling twine which is made in this country, but never imported, and also that there is a large coarse twine made of hemp, which is imported under the name of salmon twine, and is made into nets for gilling salmon."

It is true that this particular thread was used in the manufacture of nets and was imported for such use. But being linen thread when imported, it should pay the thread duty.

If Congress had intended to admit thread at greatly reduced rates when it was to be used for netting, that fact would have appeared clearly, and proper safeguards would have been provided. As no such intent appears in the law, none can be inferred.

It is true that it is part of the case that thread of this kind has been used by plaintiff and other netmakers for the manufacture of gill nets; and that this kind of thread was imported for many years previous to 1883 under the name of gilling twine, and that it was invoiced and entered as such, and was so designated on price lists and trade circulars; and that for many years before the passage of the act no other imported article was known by the special name of gilling twine.

While these facts are of sufficient consequence to introduce an element of ambiguity and to challenge discrimination, they are not of sufficient force to pass at 25 per cent. linen thread which is in terms charged with a duty of 40 per cent.

The court below refers to the perplexity of deciding what is meant by the term gilling twine in the second paragraph. The court says:

> It is apparent that Congress did not intend to let in all unbleached linen thread between the numbers of 10 and 60 at the lower duty; yet that consequence would seem to follow if these importations are to bear only the lower rate. It is not to be supposed, in the absence of express provision to that effect, that it was intended to impose a different duty on the same article according as it was used for one purpose or another, nor is it to be presumed that Congress intended to designate the same article by two different names in the same schedule.

No one is at liberty to question the statement that nine-tenths or more of the commodity under consideration is invoiced and entered as thread, and receives a dutiable rating at 40 per cent. without protest or objection.

Neither will anyone question that this is in accord with the intent of Congress.

This being the case, the same commodity, though entered, invoiced, and designated as gilling twine, should pay the same rate that other like thread pays, unless the calling of the thread "gilling twine" and the intent to consume it in netting creates a new classification.

II.

THE PRINCIPLE OF UNIFORMITY REQUIRES THE APPLICATION OF THE 40 PER CENT. RATE.

It is stated in *Worthington* v. *Robbins* (139 U. S. 341) that, "in order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself in the condition in which it is imported."

The duty upon the thing imported, whatever the name it may come under, must be uniform.

It would be a very unreasonable thing to exact 25 per cent. on this flax thread when nets are to be made of it, and 40 per cent. when it is to be consumed in sewing, and the wrong is made more glaring when it is considered that large amounts of similar flax thread are being manufactured in the United States.

This flax product can not at the same time be classified under both paragraphs.

Now it is part of this case that this commercial article is in a general sense nothing but linen thread.

It is submitted that it does not become anything else, in any special sense, because of an anticipated use. It is also part of the case that linen thread of the same kind and quality has been imported and also made here in large quantities for many other purposes than gilling.

With these facts standing unquestioned, the plaintiff in error still claims that this Scotch-made flax thread shall be rated at 25 per cent. when the importer calls it a gilling twine.

As illustrative, a case that might naturally occur if plaintiff's theory were to obtain, is this:

Richard Roe imports 5 cases of No. 35 3-cord unbleached linen thread (or twine) manufactured in Scotland by W. & J. Knox at Kilbirnie.

Now Roe intends to use one-half of the importation in shoemaking and bookbinding as a sewing thread or sewing twine, and the other half in the manufacture of gilling nets.

Whether Roe brings this thread (or twine) case by case or together should make no difference in the ad valorem rate. Whether he cuts it in halves in invoice, entry, and liquidation, or brings it as one lot and importation, with notice that he intends to send it through different channels of consumption, can not determine the dutiable character. If the nature, quality, and essential character of the thing may be ignored, and if the rating may be fixed by the character of the consumption intended, then it may follow, as the importer would claim, that $2\frac{1}{2}$ cases may be made dutiable at 40 per cent., while $2\frac{1}{2}$ cases of the same No. 35 3-cord Scotch flax thread would be admitted at 25 per cent.

Under this theory the importer could determine at will which particular case should bear a 40 and which a 25 per cent. impost.

Or he might change from one rate to the other the dutiable value of our imposts at his option up to the moment of final designation.

It is respectfully urged that before such a rule should be declared to be the law some distinct and unqualified

legislative expression authorizing the same should be pointed out.

III.

THE INTENT OF CONGRESS.

Congress intended that flax thread, linen thread, and flax twine should bear a 40 per cent. duty.

It intended that seines and the twine material thereof should pay 25 per cent.

It will scarcely do to say that Congress mistook, and put two rates upon one thing.

If such were the case, the one-twentieth used as gilling twine should not give the rate to the nineteen-twentieths used for other purposes, and the rule of uniformity would require the 40 per cent. rate on all of the material that may be called thread.

The flax-thread and twine paragraph reads as follows:

> Flax or linen thread, twine, and packthread and all manufactures of flax, or of which flax shall be the component material of chief value, not specially enumerated or provided for in this act, forty per centum ad valorem.

The seine paragraph reads as follows:

> Seines and seine and gilling twine, twenty-five per centum ad valorem.

Both appear in the same schedule and upon the same page.

The leading article in the first paragraph is linen thread. Twine and packthread are but amplifications of the principle term.

In the second paragraph the leading term is "seines" and the subordinated words are "seine and gilling twine."

It is evident that in the former Congress included the linen thread of commerce and all twine and pack thread similar to such thread, and that in the latter it included with seines such twines (not sewing thread or sewing twine of any character) as are distinctively made for netting, and are principally used in the manufacture of seines.

Linen thread is still linen thread, although one-twentieth or one-tenth of it may subsequently be woven into nets.

By the tariff act of 1864 (13 Stat., 209) there is laid "on flax or linen thread, twine and pack thread, and all other manufactures of flax, or of which flax shall be the component material of chief value, not otherwise provided for, forty per centum ad valorem."

The duty on seines by that act (see same page) is: "On seines, six and a half cents per pound." These provisions are carried without change into the Revised Statutes. (Rev. Stat., 462, 463).

When the tariff bill which formed the basis of the statute of 1883 was before Congress in February of the year named, the record of the proceedings of the Senate shows that on February 5—

> The paragraphs from line 1210 to line 1218 were read and agreed to as follows:
>
> "Flax or linen thread, twine, and pack thread, and all manufactures of flax, or of which flax shall be the component material of chief value, not specially enumerated or provided for in this act, 40 per cent. ad valorem." (Congressional Record, Forty-seventh Congress, second session, p. 2095, volume 14, part 3.)

It is thus shown that in the legislative branch of Congress where the seine paragraph was afterwards changed, the thread paragraph as it had stood since 1864 was adopted without challenge.

Said record also shows that the paragraph relating to seines read, as reported to the Senate (p. 2097)—

> Seines, 6½ cents per pound.

A motion was made in the Senate, acting as in Committee of the Whole, to change the duty to "40 per cent. ad valorem," on account of the difference in the value of seines.

The paragraph was then, and on said February 5, amended so as to read: "Seines, 35 per cent. ad valorem" (p. 2098).

When this amendment came before the Senate (p. 2562), on the 13th of the same month, Senator Conger, of Michigan, opposed the impost in the interest of the lake fishermen and said:

> I will move, when I have an opportunity to do so, to put seines and seine and gilling twine on the free list.

The agreement and concurrence on the part of the Senate in the paragraph as it now reads in the statute was reached as follows:

> Mr. SEWELL. Will the Senator be willing to modify the paragraph by inserting 25 per cent., and adding "and seine twine" to the amendment made as in committee of the whole?
>
> Mr. CONGER. I would far rather have it this way. If the Senator would say 20——
>
> Mr. SEWELL. Twenty-five per cent. is low enough.

The PRESIDING OFFICER. Will the Senator from New Jersey state his amendment?

Mr. SEWELL. I propose to make the duty 25 per cent. ad valorem instead of 35 per cent. and to add "and seine twine."

Mr. CONGER. That proposition is better than the present law. If that may be amended to add seine twine and gilling-twine I shall make no objection.

Mr. SEWELL. I will so modify the amendment I propose.

Mr. CONGER. I prefer to have it on the free list and keep it there until the treaty of Washington is revoked, and then we shall see what to do with it.

The PRESIDING OFFICER. The amendment of the Senator from New Jersey (Mr. Sewell) will be reported.

The ACTING SECRETARY. In line 1186 it is proposed to strike out "35" and to add "and seine and gilling twine, 25;" so as to read: *Seines, and seine and gilling twine, 25 per cent. ad valorem.*

The amendment to the amendment was agreed to.

The amendment as amended was concurred in.

It was stated in the discussion that the material is generally of Scotch or Irish flax and that the twine is brought from Scotland or Ireland as twine.

This debate, which resulted in incorporating in the "seine" paragrah, "seine and gilling twine" at a 25 per cent. rate, related exclusively to seines and seine and gilling twine, and no mention of or reference to linen thread or pack-thread or any other thread appears in the discussion. It seems to be plain that the Senate did not intend to interfere with the thread paragraph.